

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

OPINION GRANTING INTERVENOR COMPENSATION

This decision awards the Natural Resources Defense Council (NRDC) \$9,005 in compensation for its contribution to Decision (D.) 02-12-074.

Background

During the energy crisis of 2000-2001, the state's major electric utilities were unable to directly purchase electricity, due in part to the demise of the Power Exchange and to the utilities' inability to secure financing, among other reasons. In response to this situation, the Legislature enacted ABX1 1, authorizing the California Department of Water Resources (DWR) to purchase electricity on behalf of the utilities, with the utilities acting as a billing and distribution agent. DWR's purchasing authority enacted by ABX1 1 expired on December 31, 2002.

The Commission opened Rulemaking (R.) 01-10-024 to establish ratemaking mechanisms to enable the three major electric utilities, Pacific Gas and Electric (PG&E), Southern California Edison (Edison) and San Diego Gas and Electric (SDG&E), to resume purchasing electricity and related services. The

rulemaking also solicited proposals on how renewable resources would be included as part of new generation facilities serving the state.

D.02-08-071, an interim decision in this proceeding, allowed the utilities to enter into short-term procurement contracts, which expired on January 1, 2003. Procedural processes were developed and Procurement Review Groups (PRG) were established for all three electric utilities to hasten the review process. The role of each PRG is to provide an expedited review and informal approval of the interim procurement contracts. This process includes reviewing short-term strategies, costs and how renewable energy issues are addressed. PRG members agreed to non-disclosure of certain elements of the contracts. The NRDC is a PRG member for all three electric utilities.

This rulemaking remains open. The issue of short-term procurement contracts was resolved by D.02-12-074. In that decision, we approved short-term procurement plans for the three major electric utilities, modified and clarified the cost recovery mechanisms and standards of behavior we adopted in D.02-10-062 and provided further guidance on related long-term planning processes.

Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing

conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor's presentation must have made a substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§ 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

Procedural Issues

The prehearing conference in this matter was held on January 8, 2002. NRDC filed its timely NOI on February 7, 2002. On May 28, 2002, Administrative Law Judge (ALJ) Walwyn issued a ruling that found NRDC to be a customer under the Public Utilities Code. NRDC filed its request for compensation on February 14, 2003, within the required 60 days of D.02-12-074. NRDC has satisfied all the procedural requirements necessary to make its request for compensation.

Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).) Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation (§ 1804(b)).

In its NOI, NRDC asserted financial hardship. On May 28, 2002, ALJ Walwyn ruled that NRDC met the significant financial hardship condition.

Substantial Contribution

NRDC has been an active and productive participant as a member of the PRG for each of the three electric utilities. In D.02-10-062, the Commission stated that "participation in the procurement review process.... by non-market participants who are eligible to request intervenor compensation should be fully compensated because their active participation makes a significant contribution to this proceeding" (pp. 3-4). NRDC participated in most meetings and conference calls, submitted comments and feedback to the utilities, and made appropriate filings as part of the PRG process. NRDC also participated in the development of various procurement contract elements, protocols and terms, including a contract modification that continues the consideration of both demand and supply side resource options. Considering these factors, we find that NRDC made a substantial contribution to D.02-12-074.

Reasonableness of Requested Compensation

NRDC requests \$9,005 for its participation in this proceeding, as follows:

Attorney Fees

Ralph Cavanaugh	2002/2003	10 hours @ \$285/hour	\$2,850
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Expert Witness/Consultation Fees

Sheryl Carter	2002	13 hours @ \$135/hour	\$1,755
Sheryl Carter	2003	2.5 hours @ \$150/hour	\$ 375
Devra Bachrach	2003	40.25 hours @ \$100/hour	<u>\$4,025</u>

<u>Total</u>			\$9,005
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The total compensation requested is \$9,005. The components of this request must constitute reasonable fees and costs when compared to market rates for similar services from comparably qualified persons. Attorney Cavanaugh is the co-director for energy policy and senior attorney of the NRDC. In 1998, the Commission approved the same hourly rate of \$285 now being requested for Cavanaugh. Carter is a senior policy analyst at NRDC's air and energy program. Rates of \$135 hour for her work performed in 2002 and \$150/hour for 2003 are now requested. She has an advanced degree in environmental policy and 11 years' experience in energy and environmental matters. She has also appeared in other proceedings before this Commission and those of other states, as well. In D.98-08-016, a rate of \$100/hour was awarded for Carter for work begun in 1995. The requested rate of \$135/hour for Carter's work in 2002 is reasonable. In D.99-11-014, the Commission awarded a rate of \$150/hour for work performed by another NRDC analyst with similar experience and expertise as Carter. The requested increase to \$150/hour for 2003 is reasonable. Bachrach has a bachelor's degree in engineering, an advanced degree in energy and resources,

and four years' experience in related activities with the NRDC, Lawrence Berkeley National Lab, the California Energy Commission and this Commission.

The rates for Cavanagh, Carter and Bachrach are at or below market rates for attorneys and experts with similar educational/experience backgrounds in similar cases before the Commission. We find these rates to be reasonable.

Award

We award NRDC \$9,005. This calculation is based on the hourly rates described above. Consistent with previous Commission decisions, we will order that, after April 30, 2003 (the 75th day after NRDC filed its compensation request), interest be paid on NRDC's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15.

Interest will continue on this award until the utilities make full payment. We direct all three larger electric utilities (PG&E, Edison, and SDG&E) to share proportionally (based on their percentage of total retail sales of electricity in 2002) in the payment as NRDC participated in the PRG of all three utilities.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner. Peter V. Allen and Christine M. Walwyn are the assigned ALJs in this proceeding.

Findings of Fact

1. NRDC represents consumers, customers, or subscribers of PG&E, Edison, and SDG&E, all utilities regulated by the Commission.
2. NRDC filed its NOI to claim compensation on February 7, 2002, and its request for compensation on February 14, 2003.
3. The individual economic interests of NRDC are small in comparison to the costs incurred in effectively participating in these proceedings.
4. NRDC made a substantial contribution to D.02-12-074.
5. NRDC requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience.
6. The total of these reasonable fees is \$9,005.

Conclusion of Law

NRDC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to D.02-12-074.

O R D E R**IT IS ORDERED** that:

1. The Natural Resources Defense Council (NRDC) is awarded \$9,005 as compensation for its substantial contributions to Decision 02-12-074.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and

San Diego Gas & Electric Company (SDG&E) shall each pay NRDC the respective utility's share of NRDC's total award. The shares shall be computed on the basis of each utility's percentage of the total retail sales of electricity (measured in kilowatt-hours) in 2002 (the year most costs were incurred) for all three utilities.

3. PG&E, Edison and SDG&E shall also pay interest on the award beginning April 30, 2003, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decisions:	D0212074
Proceeding:	R0110024
Author:	ALJ Allen
Payers:	Southern California Edison Company Pacific Gas and Electric Company San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason
Natural Resources Defense Council	2/14/2003	\$9,005	\$9,005	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Ralph	Cavanagh	Attorney	National Resources Defense Council	\$285	2002/2003	\$285
Cheryl	Carter	Policy Expert	National Resources Defense Council	\$135	2002	\$135
Cheryl	Carter	Policy Expert	National Resources Defense Council	\$150	2003	\$150
Devra	Bachrach	Engineer	National Resources Defense Council	\$100	2003	\$100